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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 190207082-9233-01]

RIN 0648-XG800

**Fisheries of the Northeastern United States; Spiny Dogfish Fishery; 2019 and
Projected 2020-2021 Specifications**

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes specifications for the 2019 spiny dogfish fishery and projected specifications for fishing years 2020 and 2021. The specifications are necessary to establish allowable harvest levels and other management measures to prevent overfishing while allowing optimum yield. This action is also intended to inform and provide an opportunity for comment to the public on these proposed specifications for the 2019 fishing year and projected specifications for 2020 and 2021.

DATES: Comments must be received on or before *[insert date 15 days after date of publication in the FEDERAL REGISTER]*.

ADDRESSES: You may submit comments on this document, identified by NOAA-NMFS-2019-0008, by either of the following methods:

Electronic Submission: Submit all electronic public comments via the Federal e-Rulemaking Portal.

1. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2019-0008*,
2. Click the “Comment Now!” icon, complete the required fields, and
3. Enter or attach your comments.

– OR –

Mail: Submit written comments to Michael Pentony, Regional Administrator, National Marine Fisheries Service, 55 Great Republic Drive, Gloucester, MA, 01930. Mark the outside of the envelope: “Comments on the Proposed Rule for Spiny Dogfish Specifications.”

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.*, name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous).

A draft environmental assessment (EA) has been prepared for this action that describes the proposed measures and other considered alternatives, as well as provides an analysis of the impacts of the proposed measures and alternatives. Copies of the specifications document, including the EA and the Initial Regulatory Flexibility Analysis

(IRFA), are available on request from Dr. Christopher M. Moore, Executive Director, Mid-Atlantic Fishery Management Council, Suite 201, 800 North State Street, Dover, DE 19901. These documents are also accessible via the Internet at <http://www.mafmc.org>.

FOR FURTHER INFORMATION CONTACT: Cynthia Ferrio, Fishery Management Specialist, (978) 281-9180.

SUPPLEMENTARY INFORMATION:

Background

The Atlantic spiny dogfish fishery is jointly managed in Federal waters by the New England and Mid-Atlantic Fishery Management Councils. Additionally, the Atlantic States Marine Fisheries Commission manages the spiny dogfish fishery in state waters from Maine to North Carolina through an interstate fishery management plan. The Spiny Dogfish Fishery Management Plan (FMP) requires the specification of an annual catch limit (ACL), annual catch target (ACT), and the total allowable landings (TAL). These limits and other management measures may be set for up to five fishing years at a time, with each fishing year running from May 1 through April 30. This action proposes specifications for fishing year 2019 and projected specifications for fishing years 2020-2021.

In 2018, the Northeast Fisheries Science Center completed an assessment update for the spiny dogfish stock, using the most recent and best available catch and biomass estimates from spring trawl surveys. This update indicates that the spiny dogfish stock is not currently overfished or experiencing overfishing. However, general biomass (specifically female spawning stock biomass) has been declining due to a combination of

poor pup production and recruitment. Complications with several spring trawl surveys in recent years have also resulted in some data deficiencies for the stock. The Mid-Atlantic Council's Scientific and Statistical Committee (SSC) reviewed the assessment update and recommended reducing the acceptable biological catch (ABC) in fishing years 2019-2021. The recommended ABC for 2019 would be a 43-percent decrease from the current 2018 ABC of 22,635 mt, followed by increases to the ABC in 2020 and 2021. This recommendation is based on the Mid-Atlantic Council's Risk Policy to prevent overfishing from occurring. The quota increases in the later years of the cycle are due to a projected growth in biomass and subsequent reduced risk of overfishing.

The joint New England and Mid-Atlantic Council Spiny Dogfish Monitoring Committee (MC) derived an adjusted overfishing limit (OFL), ABC, ACL, ACT, and TAL from the SSC's recommended ABC and expected fishery data. The SSC only provided an OFL recommendation for 2019 that will be revisited as specifications are developed in the subsequent years. To calculate the portion of the total ABC available for the U.S. commercial quota each year, the MC followed the FMP's process in their recommendations and made deductions from the ABC to account for expected Canadian landings (49 mt), U.S. discards (3,475 mt), and U.S. recreational harvest (81 mt). The SSC and MC made these recommendations to the Mid-Atlantic and New England Councils and the Commission, which all reviewed them and submitted their own consistent recommended specifications. The recommended ABC and resulting commercial quota for 2019 are substantially reduced to decrease the risk of spiny dogfish becoming overfished. However, the assessment update projects an increase in the spiny

dogfish stock over the next several years. Thus, there is an allowance for quota increases in the recommendations for 2020 and 2021.

Proposed Specifications

This action proposes the Councils' recommended spiny dogfish specifications for 2019-2021. The specifications are consistent with the SSC, Monitoring Committee, and Commission's recommended catch and landings limits. These recommendations are a substantial reduction in coastwide commercial quota from fishing year 2018 to 2019 in order to ensure overfishing does not occur. However, quotas are projected to increase in 2020 and 2021 as the spiny dogfish biomass is projected to increase, and the risk of overfishing declines. Table 1 provides a summary of the proposed specifications.

Table 1. Summary of Proposed 2019, and Projected 2020 and 2021 Spiny Dogfish Fishery Specifications.

	2019 (mt)	2019 (lb)	2020 (mt)	2020 (lb)	2021 (mt)	2021 (lb)
OFL	21,549	47,507,413	N/A	N/A	N/A	N/A
ABC	12,914	28,470,497	14,126	31,142,499	16,043	35,368,761
ACL = ACT	12,865	28,362,470	14,077	31,034,473	15,994	35,260,734
TAL	9,390	20,701,000	10,602	23,373,409	12,519	27,599,671
Commercial Quota	9,309	20,522,832	10,521	23,194,835	12,438	27,421,096
Percent Change in Quota from Previous Year	-46	-46	+13	+13	+18	+18

The recommended decrease in commercial quota is not expected to result in catch overages or revenue losses in the spiny dogfish fishery, as the fishery caught less than 42 percent of the 39,099,717-lb (17,735-mt) quota in 2017, and current reported landings for fishing year 2018 are behind those of 2017 at this time.

The Councils did not recommend changes to any other regulations for the spiny dogfish fishery. All other fishery management measures, including the 6,000-lb (2,722-kg) federal trip limit, remain unchanged for fishing years 2019-2021. Changes to the trip limit were discussed and may be pursued in a future action. The Councils and NMFS will review the specifications for fishing years 2020 and 2021 to determine if any changes need to be made prior to their implementation. NMFS will publish a notice prior to each fishing year to confirm the projected specifications are effective unchanged or announce any necessary changes for those years.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), the NMFS Assistant Administrator has determined that this proposed rule is consistent with the Spiny Dogfish FMP, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

This proposed rule is exempt from review under Executive Order 12866 because this action contains no implementing regulations.

The Mid-Atlantic Council prepared a draft EA for this action that analyzes the impacts of this proposed rule. The EA includes an IRFA, as required by section 603 of the Regulatory Flexibility Act (RFA), which is supplemented by information contained in the preamble of this proposed rule. The IRFA was prepared to examine the economic impacts of this proposed rule, if adopted, on small business entities, as well as the possible economic impacts of the other alternatives presented in this EA/specifications

document. A copy of the detailed RFA analysis is available from the Council (see **ADDRESSES**). A summary of the 2019-2021 spiny dogfish specifications IRFA analysis follows.

Description of the Reasons Why Action by the Agency is Being Considered

This action proposes 2019 catch limits and projects 2020-2021 specifications for the spiny dogfish fishery. A complete description of the action, why it is being considered, and its legal basis are contained in the draft EA and in this rule's preamble, and are not repeated here.

Statement of the Objectives of, and Legal Basis for, this Proposed Rule

This action is taken under the authority of the Magnuson-Stevens Act and regulations at 50 CFR part 648. A complete description of the action, why it is being considered, and its legal basis are contained in the specifications document, and elsewhere in the preamble to this proposed rule, and are not repeated here.

Description and Estimate of the Number of Small Entities to Which this Proposed Rule Would Apply

This proposed rule affects small entities engaged in commercial fishing operations in the spiny dogfish fishery. For the purposes of the RFA analysis, the ownership entities (or firms), not the individual vessels, are considered to be the regulated entities. Ownership entities are defined as those entities or firms with common ownership personnel as listed on the permit application. Because of this, some vessels with spiny dogfish permits may be considered to be part of the same firm because they may have the same owners. To identify these small and large firms, vessel ownership data from the

permit database were grouped according to common owners and sorted by size. In terms of RFA, a business primarily engaged in commercial fishing is classified as a small business if it has combined annual receipts not in excess of \$11 million, for all its affiliated operations worldwide.

In 2017, there were 2,254 vessels that held a spiny dogfish permit, while 244 of these vessels contributed to overall landings. Cross-referencing those permits with vessel ownership database revealed that 1,695 entities owned those vessels. 1,685 were classified as small entities, with the remaining 10 classified as large businesses. Of the 1,685 small entities, 374 had no revenue in 2017, 1,104 were commercial fishing entities, and 207 were for-hire entities. For those small businesses with revenues, their average revenues were \$0.5 million in 2017. Overall, there were 227 entities with spiny dogfish permits that reported revenue from spiny dogfish during 2017. Of those entities, 1 was large and 226 were small and their average revenues in 2017 were \$0.4 million.

Description of the Projected Reporting, Record-Keeping, and Other Compliance Requirements of this Proposed Rule

There is no new reporting, recordkeeping, or other compliance requirements contained in this proposed rule, or any of the alternatives considered for this action.

Federal Rules Which May Duplicate, Overlap, or Conflict with this Proposed Rule

NMFS is not aware of any relevant Federal rules that may duplicate, overlap, or conflict with this proposed rule.

Description of Significant Alternatives to the Proposed Action Which Accomplish the Stated Objectives of Applicable Statutes and Which Minimize Any Significant Economic Impact on Small Entities

This action (the preferred alternative) proposes 2019 commercial catch specifications and projected 2020-2021 specifications for the spiny dogfish fishery based on the most recent stock assessment update and the application of the Council's Risk Policy to prevent overfishing. These proposed specifications would decrease the commercial quota by 46 percent to 9,309 mt in 2019, followed by modest increases to 10,521 mt and 12,438 mt, in 2020 and 2021 as the biomass is projected to increase and the risk of overfishing declines. Although 46 percent is a substantial quota reduction, landings reports from the most recent available full fishing year (2017) show that only 7,439 mt of spiny dogfish were landed. Available landing information for fishing year 2018 is around 23 percent lower than in 2017. Given this data, it is possible that even the large 46-percent reduction in quota for 2019 will not be constraining to the spiny dogfish industry and small entities. If the fishery were to reverse the recent landing trends and fully achieve the proposed 2019 quota, it would still generate more landings and likely more revenues than the most recent year (2017) of full fishery information. Therefore, it is expected that the proposed action will have minimal impact on small entities. There is the potential for slight negative economic impact in the short term if landings and effort drastically increase and the lowered quotas become restrictive. However, there is also possible slight positive long term impacts due to maintaining sustainability of the spiny dogfish resource.

The Council also considered a no action alternative, where the same catch limits and specifications from 2018 would continue into 2019 and beyond. This no action alternative may have a higher potential of minimizing short-term economic impacts on small entities, as it keeps the quotas higher and provides the potential for greater revenues and economic gain. However, as previously stated, effort and landings in the spiny dogfish fishery have been low in recent years, and higher quotas increase the risk of overfishing without addressing the issues in the market that may be keeping landings low.

The Council recommended these proposed specifications (preferred alternative) over the no action alternative to satisfy the Magnuson-Stevens Act requirements to ensure fish stocks are not subject to overfishing, while allowing the greatest opportunity to achieve sustainable yield. This also increases the likelihood that the fishery will remain a viable source of fishing revenues for spiny dogfish fishing entities in the long term, and makes it the better lasting economic choice. Alternative 2 (no action) was not recommended by the Council because it would exceed the catch level recommendations of the Council's SSC, put the spiny dogfish stock at an unnecessary risk of overfishing, and would be inconsistent with the requirements of the Magnuson-Stevens Act. As explained in the EA, "[g]iven the status of the spiny dogfish stock and the requirements of the MSA, alternatives that would allow catches higher than the no action alternative would risk overfishing even more than no action. Alternatives that would limit catches to less than the alternative recommended by the Councils would be unnecessarily restrictive and hamper achievement of optimum yield" (MAFMC 2019, p.11). NMFS agrees with the Council's IRFA analysis and rationale for recommending these catch limits. As such,

NMFS is proposing to implement the Council's preferred specifications, as presented in Table 1 of this proposed rule's preamble.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: March 25, 2019.

Chris Oliver,
Assistant Administrator for Fisheries,
National Marine Fisheries Service.

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